

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

P. MICHAEL SHANLEY,

Appellant,

-v-

5:09-CV-257

WILLIAM J. LEBERMAN,

Respondent.

In re: Kathleen C. Cox,

Bkr. Case No. 07-32637

Debtor.

APPEARANCES:

P. Michael Shanley, Esq.
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Appellant

William J. Leberman, Esq.
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Syracuse, New York 13202
Respondent

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

On March 3, 2009, plaintiff, an attorney, filed a notice of appeal from an Order signed January 30, 2009 by United States Bankruptcy Judge Margaret Cangelos-Ruiz in *In re: Cox*, Bankruptcy Case No. 07-32637. The Clerk of the Bankruptcy Court signed a Certification on March 3, 2009 stating that appellant failed to file a timely designation of the items to be included

in the record on appeal and a statement of the issues to be presented, in accordance with Federal Rules of Bankruptcy Procedure 8002(a) and 8006. On March 10, 2009, this Court issued an Order (Dkt. No. 2) dismissing the appeal unless, within 30 days of the Order, appellant fully complied with the Bankruptcy Rules.

Although given notice of the 30-day Order and ample opportunity to avoid dismissal, appellant has failed to submit the papers necessary to prosecute the appeal. Nor has he submitted an explanation for his failure to do so or sought an extension of time. On reviewing the order appealed from and the underlying record, and in view of appellant's complete failure to proceed in this Court, the Court finds that a lesser sanction than dismissal would not be effective. Further, there is no apparent excuse for the failure of appellant, a lawyer, to prosecute this appeal, nor is there any basis to believe that the appeal is meritorious. Moreover, it is in the interests of the Bankruptcy Court, the chapter 7 trustee, the debtor, and, in particular, the creditors that the issue of appellant's status as special counsel to the trustee in the debtor's personal injury action be resolved promptly and with finality. In the exercise of its discretion, this Court dismisses the appeal.

It is therefore

ORDERED that the appeal from the January 30, 2009 by Order of United States Bankruptcy Judge Margaret Cangelos-Ruiz in *In re: Cox*, Bankruptcy Case No. 07-32637, is denied and dismissed.

IT IS SO ORDERED.

May 12, 2009
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge